(3)

C. 8110/-

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition NO. 3569 **/2004**

PETITIONER : Jamuna Bai, W/o. Gopalram
Aged about 50 years,
Through General Power of
Attorney Santosh Kumar Gupta
S/o.Gopal Ram, aged 34 years
R/o. Baradwar-Basti, Tahsil
Sakti, District Janjgir-Champa
(C.G.)

P.h. No. 3569/04
Presented by Shri B.L. Dewda
dated 28-9-04

VERSUS

RESPONDENTS :1. Shivdayal, S/o. Judavan
Aged about 69 years,
2. Gendram, S/o.Judawan
Aged about 64 years,
3. Rajaram, S/o. Shivdayal
Aged about 42 years
4. Bhuri Bai, Wd/o. Tibhau
Aged about 81 years
5. Radheshyam, S/o. Tibhau
Aged about 59 years
All R/o. Village Baradwar-Basti
Tahsil Sakti, District Janjgir
Champa (C.G.)

PROFORMA PARTY 6. State of Chhattisgarh
Through the Collector
Janjgir-Champa (C.G.)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

(34)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.No. 3561/04 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

07/01/2005

Shri B.L.Dembra, counsel for the petitioner.

Shri Akhil Agrawal, Panel Lawyer for the State/respondent No.6.

Heard on admission.

The instant petition has been filed by the petitioner as he is aggrieved by the order dated 26/06/2001 passed in Civil Suit No. 43-A/1997 by learned Civil Judge Class-II, Sakti annexed as Annexure P-3 and by which the application for amendment in the plaint has been rejected by the said Court on the ground that by the said amendment, the nature of the suit is ~~indignant~~ changed. The suit of the petitioner before the trial Court was for declaration and partition for further declaration that the adoption deed and will deed be declared illegal and by the proposed amendment the petitioner wanted to incorporate further relief of separate possession, of mesne profit and damages.

Learned counsel for the petitioner submits that the learned Civil Judge Class-II has illegally rejected the application for amendment and on account of which the petitioner shall suffer irreparable injury and ~~which is~~ not be possible for the petitioner to obtain the suit property in the absence of decree to that effect by the trial Court.

I have heard learned counsel for the petitioner.

I have perused the plaint and the proposed amendment and impugned order. So far as the amendment sought to be incorporated by the petitioner and the relief that has been claimed by the petitioner by that amendment shall be available to the plaintiff, in case the suit of partition is decreed as in the execution of the decree of partition then the handing over of the possession is implicit. So far as the relief of mesne profit is

GRPRJ—FS/78 —9/2001—50,000.

(35)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.(C) No. 3569/04 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

concerned, the same can be claimed by the plaintiff by moving a separate application under Code of Civil Procedure in this regard and the Court below is bound to adjudicate the same after conducting the enquiry.

Under these circumstances, I do not see any merit in the present petition and accordingly the petition is dismissed.

Sd/-
Dhirendra Mishra
Judge

GRPRJ—FS/78 —9/2006—50,000.